

REMARKS

Applicant notes with appreciation the detail provided with respect to Internet based sleep website prior art in response to Applicant's previous request in regard to Official Notice. By way of this amendment claim 1 has been amended to include the limitations of original claim 5 along with a description that the visual stream changes color, in concert with cancellation of claim 5 so as to leave and claims 1, 4, and 6 pending in the application. Support for the amendment is found in claim 5 and the specification at page 3, line 23. As such, it is submitted that no new matter has been added by way of this amendment.

Based on the lack of teaching in the prior art as to the system articulated in claim 1 in present form inclusive of a visual stream changing color in concert the repetitive sleep inducing sound having a frequency between 3 and 30 Hz, allowance of the pending claims is solicited.

Currently, claims 1, 4, and 6 stand rejected under 35 U.S.C. §103(a) over Yoshida (US 5,982,414) in view of www.stanford.edu/~dement/sleeplinks.html, and is articulated in Paper No. 20070525 at Section 1, pages 3-4.

In particular, the outstanding rejection relies on the teaching of Yoshida found at col. 7, lines 35-50 and col. 7, line 59 – col. 8, line 40) in order to establish a prime facie case of obviousness with regard to visual change. Applicant submits that pending independent claim 1 recites limitations nowhere found in the prior art and that these limitations are entitled to patentable weight and further that one of skill in the art (as well as a user) would appreciate that a dynamic color change in concert with sound has a different affect on a user desirous of sleep than merely pulsing of a single color on and off.

Applicant submits that Yoshida teaches only a single color blinking on/off with sound modulation at a given frequency. This in contrast to the “a visual stream changing colors in concert with said_[repetitive sleep inducing] sound [having a frequency between 3 and 30 Hz]” of claim 1. In every instance, Yoshida teaches at most a single blue (or pale blue) screen color associated with no visual signal on a video output blinking on/off. The Examiner’s attention is directed to the following passages from Yoshida as well as claims 1-4 of Yoshida.

Col. 5, lines 36-40:

In case of using the video signal, for example, a color of the whole TV picture plane is set to pale blue, the video signal of pale blue is blinked at a specified frequency within a range of 8 to 13 Hz, thereby enabling the human being to be induced to the relaxed state.

Col. 7, lines 38-45:

Assuming that the ‘sweet sleep data’ of the subscriber, for example, subscriber A who requested the ‘sweet sleep service’ to the center has been recorded in a manner such that, for instance, the color of the sweet sleep video signal is ‘blue’, from the relax state to the sweet sleep state ‘10 Hz to 6 Hz’, and sound ‘present’, by an instruction from the CPU 20, a modulation signal to turn ON/OFF the video signal modulated by the carrier chrominance signal of ‘blue’ by ‘changed from 10 Hz to 6 Hz’ is supplied from the modulation signal generating circuit 14 to the video signal processing circuit 13.

Col. 7, lines 50-57:

When the ‘sweet sleep data’ of the subscriber B who requested the ‘sweet sleep service’ has been recorded in a manner such that, for example, the color of the sweet sleep video signal is ‘pale blue’, the sweet sleep frequency is ‘5 Hz’, and the sound ‘absence’, the modulation signal to turn ON/OFF by ‘5 Hz’ the video signal modulated by the carrier chrominance signal of ‘pale blue’ is supplied to the video signal processing circuit 13.

Col 8, lines 34-37:

The whole surface of the screen of the TV receiver 45 of the subscriber is set to blue and the picture plane is on/off controlled, namely, blinked at a frequency which gradually reaches 6 Hz from 10 Hz.

As the claimed invention has a limitation nowhere found in the prior art, Applicant respectfully submits that a prime facie case of obviousness cannot stand. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir.1991). Additionally, the prior art is submitted to lack a motivation to modulate color with sound per the pending claims. In re Kahn, 441 F.3d 977, 986; 78 USPQ2d 1329, 1335 (Fed. Cir. 2006) and that to do so is inconsistent with the on/off video output device operating in a simple on/off mode per Yoshida. For Yoshida to operate with color change requires a new mode of video device operation neither found nor contemplated therein.

In light of the above amendments and remarks, reconsideration and withdrawal of the rejection of pending claims 1, 4, and 6 under 35 U.S.C. §103(a) over Yoshida (US 5,982,414) in view of www.stanford.edu/~dement/sleeplinks.html is requested.

Summary

Claims 1, 4, and 6 remain pending in the application. Reconsideration and allowance of the claims is also solicited. Each of the claims is now believed to be in allowable form and directed to patentable subject matter. Reconsideration and allowance of the claims are solicited.

Dated: October 1, 2007

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